

1 called upon by various stations to assist them in
2 their engineering work.

3 JUDGE SIPPEL: So, that would be an ad
4 hoc kind of a job. I mean, as he's needed he's
5 hired?

6 MR. JACOBS: Right.

7 JUDGE SIPPEL: Does he get -- does he
8 go -- is he nationwide? I mean, in other words,
9 is that a national practice as opposed to a
10 local?

11 MR. JACOBS: I think it tends to be
12 local, in Missouri. But, it may go beyond.

13 His LMA is in Alabama, which is a few
14 hundred miles away.

15 JUDGE SIPPEL: Oh, I see, that's right,
16 you said that, yes. Alabama.

17 MR. JACOBS: And, he doesn't go there
18 very often.

19 JUDGE SIPPEL: No, I wouldn't think so.
20 You could do that --

21 MR. JACOBS: Right.

22 MR. JACOBS: -- the programming, if
23 you are under contract with a radio station to
24 provide programming, you pretty much do that on
25 the internet.

1 MR. JACOBS: Yes, it's done
2 electronically.

3 JUDGE SIPPEL: Yes.

4 MR. JACOBS: Basically.

5 JUDGE SIPPEL: I had a neighbor of mine
6 was a next-door neighbor, in fact, who has bought
7 a station, and who has sold a station, a small AM
8 station, out in California. And so, when he
9 comes back to see his family, he would give me
10 the run down on his whoas, his compliance whoas.
11 Anyway, he's a good guy, he's a young man. He's
12 a very good guy. Okay.

13 Let's see, what else on the list do we
14 have. I'm not going to ask you to preliminarily
15 identify any of the witnesses that you have.

16 Other documents, those will speak for
17 themselves.

18 Admissions time, I wouldn't think that
19 --

20 Documentation, I suspect that the
21 Bureau is going to have some documents from the
22 prison authorities, and from the enforcement, I'm
23 sorry, from the parole department, this type of,
24 you know, that all this stuff has been checked
25 out that we are talking about here today, there's

1 going to be verification by official records to
2 confirm that?

3 MR. SCHONMAN: Yes, sir.

4 JUDGE SIPPEL: Yes, okay.

5 What about the number of character
6 letters? Do you think it's more than -- there's
7 five that were in the -- with the application.

8 MR. JACOBS: I said ten or less.

9 JUDGE SIPPEL: Okay, that's fine.
10 That's fine. That's good. That's good. And,
11 pick the best ones out up front. By the time I
12 get reading the tenth letter, I might be tired.
13 Put the good ones up front. Okay.

14 MR. JACOBS: I noticed in the Titus
15 case there were quite a variety of different
16 personages who offered character letters. And, I
17 think we will try to follow that same idea of
18 representing the different aspects of Mr. Rice's
19 day-to-day life.

20 JUDGE SIPPEL: Well, how many letters
21 were in Titus, do you recall?

22 MR. JACOBS: I think there were ten.

23 MR. SCHONMAN: There's always the
24 possibility that the Bureau might have character
25 --

1 JUDGE SIPPEL: I understand that. No,
2 you are free to do that. I mean, yes. Yes, and
3 those would be much more interesting, but then --
4 okay, well, let's see what happens, see what
5 develops.

6 When he was convicted, the Court of
7 Appeals -- this case went all the way up to the
8 Court of Appeals, and the Court of Appeals, I
9 haven't really gotten down into the depths of the
10 ID, with Judge Steinberg's ID, but the Court of
11 Appeals they mentioned the fact that there was
12 willfulness, or intent. And, I'm assuming -- no,
13 I can't assume anything, obviously, for the false
14 statements that were made there's some intent
15 standard involved there, and it doesn't,
16 necessarily, have to be that he intended to make
17 a false statement, and he knew the statement was
18 false and he made it is good enough. But, I
19 think the willfulness and intent also went to the
20 criminal violations.

21 And, I was just questioning whether
22 the -- whether there was an psychiatric testimony
23 or evidence offered at that time. In other
24 words, in Judge Steinberg's case, all the way up,
25 was there any psychiatric evidence, psychiatric

1 reports, psychiatric examination, anything like
2 that? Was that straight up? He was convicted of
3 the crimes, were the crimes were open and shut,
4 that's it?

5 MR. SCHONMAN: I don't recall.

6 JUDGE SIPPEL: Do you recall?

7 MR. JACOBS: No, I don't recall either.

8 The reports that you received --

9 JUDGE SIPPEL: Yes.

10 MR. JACOBS: -- were post.

11 JUDGE SIPPEL: Yes, I realize that.

12 MR. JACOBS: And, did address those
13 very points. And, I think Dr. Simmons was of the
14 view that to use layman's language Mr. Rice
15 wasn't quite himself at the time that these
16 things happened.

17 JUDGE SIPPEL: I got the flavor.

18 MR. JACOBS: As to the
19 misrepresentations, he was not involved
20 personally with any of that. And, this is the
21 kind of thing where, again --

22 JUDGE SIPPEL: Can you explain that, a
23 little bit of the circumstances from your side on
24 the statements?

25 MR. JACOBS: -- well, he was in prison

1 from September, 1994, until December, 1999. The
2 order to show cause on the revocation was not
3 released until October 10, 1995.

4 So, he was already in prison at that
5 time, and he took no part in that hearing, by way
6 of testimony or any other way.

7 His counsel maintained that the so-
8 called Section 1.65 statements to the Commission
9 describing Mr. Rice's non-involvement in station,
10 stations, were signed by somebody else, Janet
11 Cox, the Vice President.

12 JUDGE SIPPEL: Was it her name or was
13 she signing his name?

14 MR. JACOBS: No, she was signing her
15 name as the Vice President in charge.

16 JUDGE SIPPEL: Okay.

17 MR. JACOBS: And, that he never saw any
18 of those statements, or had anything to do in
19 their preparation. Counsel, basically, prepared
20 those statements, in consultation with Ms. Rice -
21 - Cox -- and, Ms. Cox signed them.

22 MR. SCHONMAN: Your Honor, if I could
23 --

24 JUDGE SIPPEL: Sure.

25 MR. SCHONMAN: -- comment on that.

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1 You know, I appreciate Mr. Jacobs
2 responding to your inquiry about what transpired.
3 But, according to --

4 JUDGE SIPPEL: Only from how he sees
5 it.

6 MR. SCHONMAN: Yes. Right.

7 According to the HDO, certainly, the
8 decisions of findings and conclusions as to what
9 exactly transpired are fixed, res judicata, and
10 not to be re-litigated in this case.

11 So, I would submit that the initial
12 decision, and all subsequent decisions, are the
13 basis for any conclusions you might draw. They
14 are -- in other words, we are not looking back,
15 we are not re-litigating, we are not reviewing,
16 we are not considering what might have happened
17 or physicians' counsel on what might have
18 transpired. The findings and conclusions of
19 those cases are the record in this case, of which
20 you can take official notice. But, according to
21 the HDO are not to be disturbed.

22 In other words, in the first trial it
23 was determined that there was misrepresentation
24 by the company, and Mr. Rice was either a major
25 shareholder or the sole shareholder at the time,

1 and that they were attributable to the company,
2 and that formed the basis for why the licenses
3 were revoked. In other words, the
4 misrepresentation was an independent basis for
5 revoking the licenses.

6 To the extent that he may -- that is,
7 Mr. Rice may or may not have participated in
8 filling out forms, or consulting with counsel at
9 the time, is really immaterial to any decision in
10 this trial.

11 JUDGE SIPPEL: I disagree with that.
12 The issue in this trial is much different. The
13 issue in this trial is rehabilitation. And, if
14 he was -- take the extreme, if he was found to be
15 involved in an unlawful statement by virtue of
16 the fact that he was the principal, and the
17 person that did it was the agent, that's enough
18 for him to have -- that's enough for the
19 violation to be found, and for him to suffer the
20 consequences in that hearing.

21 In this hearing, he's petitioning the
22 Commission and saying, look, whatever I -- I'm
23 rehabilitated now, whatever happened there
24 happened, but now I'm rehabilitated.

25 Well, the deciding point for me, since

1 this again is also -- I mean, there's got to be
2 objective factors, but the subjective conclusion
3 is, well, what was the nature of the violation.
4 In other words, did he pull the trigger? Did he
5 order the trigger to be pulled? Or, was he in a
6 restaurant someplace down the road, and he said,
7 well, I didn't mean you to shoot him, I wanted
8 you to knife him. I mean, that does make some
9 difference, in terms of rehabilitation 20 years
10 after the fact.

11 MR. SCHONMAN: As a matter of law, I
12 think he was found to have misrepresented. The
13 question now is whether he's been rehabilitated,
14 whether he can be depended upon to deal
15 truthfully with the Commission.

16 JUDGE SIPPEL: Exactly.

17 MR. SCHONMAN: So, we are not looking
18 at -- we are looking at his subsequent actions
19 since that time.

20 JUDGE SIPPEL: Yes.

21 MR. SCHONMAN: We are not reviewing his
22 actions at that time.

23 JUDGE SIPPEL: Well, that is -- now,
24 that sounds good, but at what point do you start?
25 At what point do you start to make a

1 determination of rehabilitation? Do you start in
2 the middle of that time period, or just five
3 years after the events, or do you start at the
4 event?

5 To take this backfire, you don't want
6 to start at the event and understand the event,
7 not just the fact that it was a violation. I'm
8 buying that. I'm not going to collaterally
9 attack that. It's the circumstances of the
10 violation.

11 Let me ask Mr. Jacobs, how do you
12 respond to this?

13 MR. JACOBS: Well, this is --

14 JUDGE SIPPEL: This is what he's
15 saying.

16 MR. JACOBS: -- this goes back, I,
17 actually, agree with just about everything that
18 Mr. Schonman said.

19 JUDGE SIPPEL: Well then, I should shut
20 up.

21 MR. JACOBS: This brings us back to the
22 stipulation point that you talked about.

23 JUDGE SIPPEL: Yes.

24 MR. SCHONMAN: Yes, sir.

25 MR. JACOBS: I guess what I'm

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1 concerned about, and I appreciate what you are
2 saying, Your Honor, about trying to understand
3 what is passed is prologue, or whatever.

4 JUDGE SIPPEL: Well said.

5 MR. JACOBS: But -- I just had to look
6 at the building to read that.

7 Anyway, I would not like to see Mr.
8 Rice cross examined at this hearing about what
9 happened in 1990, 1994, whatever.

10 JUDGE SIPPEL: Yes, I see.

11 MR. JACOBS: Because, first of all, it
12 was so long ago, literally. I mean, we are
13 talking about more than 20 years ago.

14 Secondly, he wasn't -- from our point
15 of view, was not involved.

16 And, thirdly, as Mr. Schonman said, we
17 are supposed to accept that that hearing record
18 for what it says, whatever that is, and not
19 revisit it.

20 The one little point which goes to
21 your initial question, which I think can be
22 reconciled with what we've been saying, there is
23 an exhibit in the previous hearing which is the -
24 - I don't what it's technically called, it's like
25 the verdict, and it's written out.

1 JUDGE SIPPEL: The Federal Court
2 verdict?

3 MR. JACOBS: Right. And, it seems
4 almost to be -- it's handwritten by somebody,
5 perhaps, the judge himself. And, it lists each
6 of the offenses which have been adjudicated, and
7 the number of years, and so on.

8 There is a word which comes up in this
9 context, and it's a distasteful word, but it's
10 there, and it's the word sodomy, which has a
11 very, very, very broad definition in Missouri, in
12 particular.

13 And again, in the trial record of that
14 proceeding, you see that there was -- there were
15 exhibits which describe what it was, what this
16 count of the information actually was. And, it
17 turns out that sodomy is not what you and I might
18 think. It's described as touching of the male
19 genitals.

20 My point is not that, but the word
21 forcible is not there, not in the judge's
22 verdict. It's not in the Bureau's proposed
23 findings, and it's, certainly, not in Mr. Rice's
24 findings.

25 But, somehow that word has crept into,

1 of all places, the Court of Appeals, and
2 referring to forcible sodomy. So, there is --
3 and that's a mistake, as far as we are concerned.
4 We don't think there's any evidence of forcible
5 anything, violent or forcible anything, in the
6 previous case, but that case stands for itself,
7 and, you know, everyone can look at the findings
8 and conclusions.

9 It's a shame, when subsequent
10 adjudications seem to have twisted things a
11 little.

12 JUDGE SIPPEL: That's what lawyers are
13 for. Well, let's not rehash it, but in that
14 sense, yes, I hear what you are saying. But
15 again, you didn't represent him in the criminal
16 case, though, or did you represent him in the
17 criminal case, Mr. Rice? Were you his counsel in
18 the criminal case?

19 MR. JACOBS: I'm sorry.

20 JUDGE SIPPEL: Were you his counsel in
21 the criminal case?

22 MR. JACOBS: In the criminal case?

23 JUDGE SIPPEL: Criminal case, yes.

24 MR. JACOBS: No.

25 JUDGE SIPPEL: Well, as the person who

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1 represented him in the criminal case, I assume he
2 was a lawyer. I assume Mr. Rice had a lawyer.

3 MR. JACOBS: Our firm -- no, the law
4 firm that I then was special counsel to,
5 represented him. I, myself, was not involved in
6 the trial, because I was the one who wrote the
7 Section 1.65 statements, which got into
8 difficulties. So, it was deemed appropriate that
9 I not participate in the trial.

10 JUDGE SIPPEL: Okay, the point being
11 that somebody -- I mean, I'm not ascribing any
12 misconduct or anything to anybody, but I'm saying
13 that that is the kind of error one would hope
14 somebody would pick up on the spot, in other
15 words, so that it could possibly be corrected.
16 Once the thing gets sealed and everything else in
17 criminal cases, as I understand it, you know,
18 they are awfully hard to undo.

19 But, that be as it may. That's a very
20 fine piece of distinction that I'm having -- I
21 might have some trouble with.

22 But, let me ask you this question. Is
23 the -- I mean, was the victim of the "sodomy,"
24 whatever, however it was characterized, a
25 juvenile?

1 MR. JACOBS: Below the age of consent.

2 JUDGE SIPPEL: Yes.

3 MR. JACOBS: There were five victims,
4 and, frankly, I don't have the papers here to see
5 which one was involved. The victims ranged in
6 age from 13 to 16.

7 JUDGE SIPPEL: Well, that might have
8 been part of the answer anyway, that there was --
9 where the word forcible was used, when that crept
10 up, forcible sodomy.

11 MR. JACOBS: But, not in the State
12 Court proceeding or in the FCC proceeding. It
13 only crept in later, to the best of my knowledge.

14 MR. SCHONMAN: Your Honor, I'm not a
15 criminal lawyer, of course, but I have to assume
16 that a youngster can't consent, and that might be
17 a basis for how the court came up with the view
18 that it was forcible.

19 JUDGE SIPPEL: Yes, well, that's what
20 I'm trying to get at, although the court would
21 never have to reach that conclusion, because once
22 you get below the age of consent, then you got
23 caught. You know, why go into the forcible and
24 all that, it was an aggravated type of sodomy.
25 And, if you can have aggravated sodomy, that's

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1 not intent, somebody doesn't want, but, yes,
2 there could be circumstances, I suppose, where
3 there's some violence here, some connection over
4 and above. I'm going to get in trouble if I talk
5 anymore about this.

6 MR. JACOBS: Your Honor?

7 JUDGE SIPPEL: Yes, go ahead.

8 MR. JACOBS: If you don't mind, I
9 wanted to swing back to the matter we were
10 discussing earlier.

11 JUDGE SIPPEL: Well, wait, we are still
12 on the same point, though. What is your point,
13 your point is that you want to bring this out in
14 the hearing?

15 MR. JACOBS: No, you were, I thought,
16 asking whether there was any intent or whatever.
17 And, I thought you were pointing toward the
18 question of forcible.

19 JUDGE SIPPEL: Well, that's all part of
20 that. Again, it's -- rehabilitation starts, I
21 think it starts from the minute of completion of
22 the crime to the present.

23 So, you've got to understand the crime
24 to understand -- to make an evaluation of
25 rehabilitation. In other words, let me put it

1 another way. What is he being rehabilitated
2 from?

3 MR. SCHONMAN: I think what he's being
4 rehabilitated from is a matter of record that
5 doesn't need exploration in this -- in the
6 context of this hearing.

7 If Your Honor intends to explore, for
8 example, with the misrep and lack of candor
9 matter, the extent to which Mr. Rice was or was
10 not involved in that, then, certainly, we are
11 going to -- the Bureau would insist on exploring
12 the precise nature of the crimes that he
13 committed, and having Mr. Rice testify about each
14 and every detail of the crimes that he committed.

15 JUDGE SIPPEL: Well, wait, no, wait, we
16 are off --

17 MR. SCHONMAN: The significance of
18 that.

19 JUDGE SIPPEL: -- those are two
20 different issues. Those are two different
21 issues.

22 The misrepresentation is in a class by
23 itself, having nothing to do with these criminal
24 acts that he was convicted of. He wasn't
25 convicted of making a false statement.

1 MR. SCHONMAN: Oh, of course, of course
2 they are entirely different issues.

3 JUDGE SIPPEL: Yes.

4 MR. SCHONMAN: But, the point I'm
5 trying to make is that if you are going to go
6 back and look at the act itself, which formed the
7 basis for the misrep and lack of candor finding
8 by Judge Steinberg, then I think it's also
9 reasonable to go back and look at the criminal
10 acts that were convicted to determine whether
11 he's been rehabilitated from those heinous
12 crimes.

13 And, I think --

14 JUDGE SIPPEL: Those are -- go ahead.

15 MR. SCHONMAN: -- I mean, they are
16 both the matter of record, exactly what and what
17 was not done. The Bureau doesn't think we have
18 to go back and explore those actions. I think
19 rehabilitation starts after the act, whether it
20 was the criminal act or the misrep and lack of
21 candor actions. But, my point is that if you
22 intend to look at the action for one of the
23 issues, you should look at the actions for the
24 other issue.

25 JUDGE SIPPEL: It doesn't follow. Mr.

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1 Jacobs has made pretty clear the fact that his
2 client doesn't want any -- they don't want to get
3 into that maelstrom with respect to the sex acts.

4 We'll take the record for what it is and move
5 forward.

6 MR. SCHONMAN: Nor does the Bureau, but
7 --

8 JUDGE SIPPEL: The rep -- misrep is
9 something different.

10 MR. SCHONMAN: -- well, we are talking
11 about a rehabilitation from one act, and we are
12 talking about a rehabilitation from another act.

13 JUDGE SIPPEL: Correct.

14 MR. SCHONMAN: And, the point that I
15 think you were making before is that we should go
16 back and look at the act itself to determine what
17 he's being rehabilitated from.

18 And, I think that that logic, if you
19 intend to pursue that, is that it applies to
20 both, that in order to know whether he's been
21 rehabilitated from these crimes we have to know
22 the details of the crimes.

23 If you intend to determine what he's
24 been rehabilitated from with respect to misrep
25 and lack of candor, you have to know about his

1 participation and lack of candor.

2 I don't agree with that we need to go
3 back and look, but if Your Honor intends to look
4 back at the act itself for one of the issues, we
5 should go back and look at the act themselves for
6 the other issue.

7 JUDGE SIPPEL: I don't buy the logic
8 for this.

9 MR. SCHONMAN: So that we can find out
10 whether he's been rehabilitated from both.

11 JUDGE SIPPEL: I don't buy the logic
12 here.

13 MR. SCHONMAN: The crimes and the
14 misrep.

15 JUDGE SIPPEL: I'm sorry. I didn't
16 mean to cut you off.

17 I understand the distinction you are
18 making. My point is, is that if Mr. Jacobs
19 stipulates that everything that is in the record
20 that was found him guilty of these criminal acts,
21 he's willing to stipulate to so we don't have to
22 revisit it. That's -- so that's issue number
23 one.

24 So, it would be -- it would be a waste
25 of time to go back and even the hint of

1 reexamining for any purpose at all would make no
2 sense. It would be a waste of time.

3 There's no waste of time with respect
4 to the other -- to the misleading statements,
5 however. You know, if I'm convinced of that.

6 MR. SCHONMAN: I'm not following. You
7 are trying to determine whether someone has been
8 rehabilitated from an action.

9 JUDGE SIPPEL: I'm -- yes, go ahead,
10 continue.

11 MR. SCHONMAN: Now, let me make very
12 clear, the Bureau is not advocating to look back
13 as to either of these matters. We have no
14 intention of exploring the grizzly details of the
15 criminal actions that were committed here. All
16 right? We don't think we have to, in order to
17 determine whether or not Mr. Rice has been
18 rehabilitated.

19 Similarly, with regard to the misrep
20 and lack of candor, we don't think that we have
21 to look back at whether he did or did not do
22 something with respect to misrep and lack of
23 candor. We think the record speaks for itself.
24 The question is, has he been rehabilitated to the
25 extent that he can now be trusted and depended

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1 upon to deal truthfully with this agency.

2 I think it's a matter of record what
3 his actions were, and we don't have to review
4 that in the context of this hearing. All I'm
5 saying is, is that if you do find it important
6 and critical to review his actions with respect
7 to lack of candor --

8 JUDGE SIPPEL: Or inactions.

9 MR. SCHONMAN: -- or inactions, to
10 determine whether he's been rehabilitated, then
11 we, necessarily, should look at the criminal acts
12 that were committed, to determine whether he's
13 been rehabilitated from those.

14 I'm not advocating that -- I'm not
15 advocating that we look back at either one, but
16 if we look back at one, we should look back at
17 the other.

18 JUDGE SIPPEL: Well, I don't -- the
19 logic doesn't follow for me, but again, we are
20 very early on in the case.

21 MR. SCHONMAN: And, I seem to hear Mr.
22 Jacobs say that he agreed that we do not,
23 necessarily, have to look back at his actions
24 with respect to misrep and lack of candor.

25 JUDGE SIPPEL: That's exactly what I

1 said. I recognize that. And, if he -- if he
2 stipulates that everything that was found with
3 respect to these criminal events, even though
4 he's dissatisfied with the sodomy finding, that
5 he points out has crept into the record, but even
6 if he can live with that, and he doesn't want to
7 go back and do anything with those findings, you
8 know, I'm not suggesting a collateral attack, I'm
9 not talking about that at all. But, I'm talking
10 about just talking about it, then I'm going to
11 just have to make and determine on rehabilitation
12 for the record as it sits. You know, a static
13 piece of paper that says, you know, forcible
14 sodomy or something.

15 But, I don't know if it's going to
16 mean a hill of beans to me in the final analysis
17 anyway. We are just exploring here of where you
18 want to go with the evidence in the trial.

19
20 Now, let me just ask Mr. Jacobs. Do
21 you agree with everything that he says?

22 MR. JACOBS: Essentially, I do, Your
23 Honor. The thing is that, the HDO here seemed to
24 establish that we are stuck with the findings,
25 and facts, and conclusions from the previous

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1 proceeding. Let the chips fall where they may.

2 In the criminal proceeding, Mr. Rice,
3 essentially, pleaded guilty. So, we do not have
4 any desire to revisit that. On the
5 misrepresentation issue, there was an FCC issue,
6 and Mr. Rice's counsel vigorously opposed the
7 Bureau's view that Mr. Rice was responsible for
8 the misrepresentations, apart from and in a hyper
9 technical sort of way the record evidence showed
10 that he was in prison, he wasn't consulted, and
11 that was that.

12 So, you know, I would like to -- I
13 would be happy to revisit that, but I am willing,
14 it seems to me we have the law of the case here
15 already, that we are supposed to accept the
16 findings and conclusions on both of those issues,
17 whether we like them or not, and not revisit
18 them.

19 So, I'm content to start the question
20 of rehabilitation from misrepresentation/lack of
21 candor at the prison door, or wherever, you know,
22 we talked about the prison door, or later.

23 JUDGE SIPPEL: Prison door going in, or
24 the prison door coming out?

25 MR. JACOBS: No, going in. Originally,

1 Mr. Schonman and I talked about the prison door
2 going out, and we thought that maybe advanced
3 things too far down, that rehabilitation,
4 presumably, was occurring in prison. And, Mr.
5 Rice should get an opportunity to talk about
6 that, or present documents pertaining to that.

7 So, I'm content to leave everything on
8 the criminal side and the misrepresentation side
9 just as it is on the existing record, and not
10 revisit it.

11 The point I was making on the forcible
12 sodomy is consistent with that, because forcible
13 was not in the Commission's record, it just crept
14 in later on.

15 JUDGE SIPPEL: The Court of Appeals?

16 MR. JACOBS: Right. And, I don't know
17 how that happened, but if you look at the HDO
18 here --

19 JUDGE SIPPEL: Wait, what was the
20 record that was the joint -- there must have been
21 a joint record that was put together for the
22 Court of Appeals.

23 MR. JACOBS: You know, unfortunately,
24 passions have run high in this case, and I think
25 sometimes people have gotten emotional, and have